

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARILYN PHILLIPS,
Plaintiff,

v.

HOMEcomings123, *et al.*,
Defendants.

§
§
§
§
§
§
§

CIVIL ACTION NO. H-14-2211

MEMORANDUM AND ORDER

This case is before the Court on the Motion to Remand [Doc. # 6] filed by Plaintiff Marilyn Phillips, to which Green Tree Servicing LLC (“Green Tree”) filed a Response [Doc. # 9]. Having reviewed the full record and applicable legal authorities, the Court **grants** the Motion to Remand.

Plaintiff filed this lawsuit on May 10, 2013, challenging an impending foreclosure on her home. Defendants GMAC Mortgage, LLC, and Homecomings Financial, LLC, had previously filed bankruptcy petitions in May 2012.¹ Plaintiff did not serve Green Tree with the state court lawsuit, but Green Tree nonetheless filed an Original Answer on July 8, 2014. Green Tree then filed a Notice of Removal on August 1, 2014. Plaintiff filed a timely Motion to Remand, arguing that the removal


¹ By Order [Doc. # 8] entered September 2, 2014, all claims against these two Defendants were dismissed.

was untimely because it occurred more than one year after the lawsuit was commenced. The Motion to Remand is now ripe for decision.

A case may not be removed on the basis of diversity jurisdiction “more than one year after commencement of the action, unless the district court finds that the plaintiff has acted in bad faith in order to prevent the defendant from removing the action.” 28 U.S.C. § 1446(c)(1). Green Tree argues that Plaintiff acted in bad faith by failing to effect timely service. The Court cannot find from this record that Plaintiff’s failure to serve Green Tree promptly was the result of bad faith designed to prevent Green Tree from removing the case. As a result, the removal was untimely pursuant to § 1446(c)(1), and it is hereby

ORDERED that Plaintiff’s Motion to Remand [Doc. # 9] is **GRANTED** and this case will be remanded by separate order to the 113th Judicial District Court of Harris County, Texas.

SIGNED at Houston, Texas, this 29th day of **September, 2014**.



Nancy F. Atlas
United States District Judge